MONTANA LEGISLATIVE HISTORY

Chapter 103 1979

Bill H _____ S 141 Original bill & history ✓ C

H. Committee on Labor & Employment Relations		S. Committee on Labor & Employment Relations	
Hearing Date(s) Feb 10	✓ C	Hearing Date(s) Jan 25	✓ C
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Date Out _____	____ C		

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____ Report _____

CHAPTER NO. 108

SENATE BILL NO. 141

INTRODUCED BY MEHRENS, PETERSON, HEALY, HAFFERMAN, LOWE

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

IN THE SENATE

January 17, 1979	Introduced and referred to Committee on Labor and Employment Relations.
January 29, 1979	Committee recommend bill do pass as amended. Report adopted.
January 30, 1979	Printed and placed on members' desks.
January 31, 1979	Second reading, do pass.
February 1, 1979	Considered correctly engrossed.
February 2, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 3, 1979	Introduced and referred to Committee on Labor and Employment Relations.
February 12, 1979	Committee recommend bill be concurred in as amended. Report adopted.
February 13, 1979	On motion, postponed until the 46th Legislative Day.
February 27, 1979	Second reading, concurred in.
February 28, 1979	Third reading, concurred in as amended.

IN THE SENATE

March 1, 1979	Returned from second house. Concurred in as amended.
March 3, 1979	Second reading, pass consideration.
March 5, 1979	Second reading, amendments adopted.
March 6, 1979	Third reading, amendments adopted. Sent to enrolling.
	Reported correctly enrolled.

INTRODUCED BY Senate BILL NO. 141 Hoffman Nelson Pinsoneault Healy Lowe

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO WORKERS' COMPENSATION; AMENDING SECTIONS 39-71-208, 39-71-210, 39-71-304, 39-71-405, 39-71-504, 39-71-603, 39-71-604, 39-71-609, 39-71-736, 39-71-901, 39-71-905, 39-71-906, 39-71-2202, 39-71-2301, AND 39-71-2306, MCA; AND REPEALING SECTIONS 39-71-305, 39-71-404, 39-71-2309, AND 39-71-2310, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-208, MCA, is amended to read:

"39-71-208. Blank forms, minutes, and records. The division shall cause to be printed such blank forms as it ~~shall--deem--requisite~~ considers necessary to facilitate or promote the efficient administration of this chapter. It shall provide a ~~book-in-which-shall-be-entered-the-minutes-of-all-its-proceedings,-a-book-of-record-in-which--shall--be~~ recorded record of all awards made by the division, and such other books or records as it ~~shall-deem-requisite~~ considers necessary for the purpose and efficient administration of this chapter. All such records are to be kept in the office of the division."

Section 2. Section 39-71-210, MCA, is amended to read:

"39-71-210. Annual report of division -- copies for general distribution. The division shall, ~~not-later-than October-1~~ after the end of each fiscal year, make a report to the governor covering its entire operations and proceedings for the ~~preceding~~ fiscal year, with such suggestions or recommendations as it may deem of value for public information. A reasonable number of copies of ~~such~~ the report shall be printed for general distribution."

Section 3. Section 39-71-304, MCA, is amended to read:

"39-71-304. Books, records, and payrolls to be open to inspection -- penalty for refusal. The books, records, and payrolls of the an employer pertinent to the administration of this chapter shall always be open to inspection by the division or any duly authorized employee thereof for the purpose of ascertaining the correctness of the payroll, the number of ~~men~~ workers employed, and such other information as may be necessary for the division and its management under this chapter. Refusal on the part of ~~the~~ an employer to submit ~~said~~ the books, records, and payrolls for such inspection shall subject the offending employer to a penalty of ~~$100~~ $500 for each offense, to be collected by through a civil action in the name of the state and paid into the state treasury."

Section 4. Section 39-71-405, MCA, is amended to read:

"39-71-405. Liability of employer who contracts work out. (1) ~~Any~~ An employer who contracts with an independent contractor to have work performed of a kind which is a regular or a recurrent part of the work of the trade, business, occupation, or profession of such employer ~~shall be~~ is liable for the payment of ~~compensation~~ benefits under this chapter to the employees of ~~any---subcontractor unless the subcontractor primarily liable for the payment of such compensation has coverage under this chapter~~ the contractor if the contractor has not properly complied with the coverage requirements of the Worker's Compensation Act. Any ~~employers~~ insurer who ~~shall become~~ becomes liable for ~~such compensation~~ payment of benefits may recover the amount of benefits paid and to be paid and necessary expenses from the ~~subcontractor~~ contractor primarily liable therein.

(2) Where ~~any~~ an employer procures contracts to have any work to be done~~---wholly---or---in---part---for---him~~, by a contractor other than an independent contractor, and the work so ~~procured~~ contracted to be done is a part or process in the trade or business of ~~such~~ the employer, then ~~such~~ the employer ~~shall be~~ is liable to pay all ~~compensation~~ benefits under this chapter to the same extent as if the work were done without the intervention of ~~such~~ the contractor, and the work so ~~procured~~ contracted to be done shall not be construed to be casual employment. Where ~~any~~ an employer

~~procures~~ contracts work to be done as specified in this subsection, ~~such~~ the contractor and ~~his~~ the contractor's employees shall ~~be presumed to have elected to~~ come under that plan of compensation adopted by the employer ~~unless they shall have otherwise elected as provided herein~~.

(3) Where ~~any~~ an employer ~~procures~~ contracts any work to be done, wholly or in part for ~~him~~ the employer, by ~~a~~ an independent contractor, where the work so procured contracted to be done is casual employment as to such employer, ~~then such~~ then the contractor shall become the employer for the purposes of this chapter.

~~(4) Where an employer procures any work to be done by any contractor or through him by a subcontractor, the payment for which is to be made in property other than money or its equivalent and the value of which property is speculative or intangible, then and in that event the employer shall not be liable for compensation, but such liability shall fall upon the contractor or subcontractor, as the case may be.~~"

Section 5. Section 39-71-504, MCA, is amended to read:

"39-71-504. Funding of fund. The fund shall be funded in the following manner:

(1) The division shall require that the uninsured employer pay to the fund a penalty of either double the premium amount the employer would have paid on the payroll

of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or ~~$500~~ $200, whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the division shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured. An assessment for payroll paid by the uninsured employer for any time prior to July 1, 1977, may not be made.

(2) The fund shall receive from an uninsured employer an amount equal to all benefits paid or to be paid from the fund to an injured employee of the uninsured employer. However, the uninsured employer's liability under this subsection may not exceed $30,000.

~~(3) In no event may an uninsured employer's combined liability under subsections (1) and (2) of this section exceed $30,000.~~

~~(4)~~(3) The division may~~, at the beginning of each fiscal year,~~ determine that the $1,000 assessments that are charged against an insurer in each case of an industrial death under 39-71-902(1) shall be paid to the uninsured employers' fund rather than the subsequent injury fund."

Section 6. Section 39-71-603, MCA, is amended to read:

"39-71-603. Notice of ~~claims for~~ injuries other than death to be submitted within sixty days ~~--exception--~~

~~actual notice.~~ No ~~claims~~ claim to recover ~~compensation~~ benefits under ~~this [act]~~ the Workers' Compensation Act, for injuries not resulting in death, shall be ~~maintained~~ considered compensable unless, within 60 days after the occurrence of the accident which is claimed to have caused the injury, notice ~~in writing stating the name and address of the person injured,~~ of the time and place where the accident occurred, and the nature of the injury ~~and signed by the person injured or someone in his behalf shall be served upon~~ is given to the employer or the employer's insurer, by the injured employee or someone on the employee's behalf. ~~except as otherwise provided in 39-71-602. However, actual~~ Actual knowledge of such the accident and injury on the part of such the employer or his the employer's managing agent or superintendent in charge of the work upon which the injured employee was engaged at the time of the injury ~~shall be~~ is equivalent to ~~such service~~ notice."

Section 7. Section 39-71-604, MCA, is amended to read:

"39-71-604. Application for compensation ~~under plan three.~~ (1) Where a worker is entitled to ~~compensation~~ benefits under ~~compensation plan No. 3~~ this chapter, the worker shall file with the division an application therefor, together with the certificate of the physician who attended him. and it shall be insurer or the division all reasonable

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information needed by the insurer to determine compensability. It is the duty of such the worker's attending physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the division without charge to the workmen worker. The filing of a certificate of forms or other documentation by the attending physician does not constitute a sworn claim for compensation.

(2) For a proper compliance with the provisions of subsection (1) of this section, the physician, after approval by the division, shall be paid out of the division's administrative moneys in the earmarked revenue fund, $2.50 for each case.

(3)(2) Where death results from the an injury, the parties entitled to compensation under compensation plan No. 3 or someone in their behalf shall make application for the same to the division file a claim with the insurer or the division. The application claim must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the rules of the division."

Section 8. Section 39-71-609, MCA, is amended to read:

"39-71-609. Denial of claim after payments made or

termination of benefits by insurer -- fifteen fourteen days' notice required. If the an insurer determines to deny a claim on which payments have been made under 39-71-608 during a time of further investigation or, after a claim has been accepted, terminates biweekly compensation benefits, it may do so only after 15 14 days' written notice to the claimant, the claimant's authorized representative, if any, and the division. However, if an insurer has knowledge that a claimant has returned to work, compensation benefits may be terminated as of the time the claimant returned to work."

Section 9. Section 39-71-736, MCA, is amended to read:

"39-71-736. Compensation -- from what date paid. When an injured employee has a beneficiary who is entitled to compensation in case of the employee's death, no No compensation shall may be paid for the first week of any 5 days loss of wages due to an injury., but if disability If loss of wages continues 1 week for more than 5 days, compensation shall be paid from the date of injury. However, separate benefits of medical and hospital services shall be furnished from the date of injury."

Section 10. Section 39-71-901, MCA, is amended to read:

"39-71-901. Definitions. As used in this part, the following definitions apply:

(1) "Vocationally handicapped" means a person who has

a medically certifiable permanent ~~physical~~ impairment which is a substantial obstacle to obtaining employment or to obtaining reemployment if the employee should become unemployed, considering such factors as the person's age, education, training, experience, and employment rejection.

~~(2) "Certifying agency" means the section of rehabilitation, division of workers' compensation.~~

~~(3)~~(2) "Certificate" means documentation issued by the ~~certifying agency~~ division of workers' compensation to an individual who is vocationally handicapped.

~~(4)~~(3) "Fund" means the subsequent injury fund."

Section 11. Section 39-71-905, MCA, is amended to read:

"39-71-905. Certification as vocationally handicapped. A person who wishes to be certified as vocationally handicapped for purposes of this part may apply to the ~~certifying agency~~ division on forms furnished by ~~that agency~~ the division. The ~~certifying agency~~ division shall conduct an investigation and shall issue a certificate to a person who, in the division's discretion, meets the requirements for vocationally handicapped certification. Failure of a person to be certified before employment precludes the person's employer or an employer's insurer from benefits under this part."

Section 12. Section 39-71-906, MCA, is amended to

read:

"39-71-906. Employer hiring or retaining certified vocationally handicapped person to file information with ~~certifying agency~~ division -- effect of failure to file. Upon commencement of employment or retention in employment of a certified vocationally handicapped person, the employer shall submit to the ~~certifying agency~~ division, on forms furnished by the ~~agency~~ division, all pertinent information requested by the ~~agency~~ division. The ~~certifying agency~~ division shall acknowledge receipt of the information. Failure to file the required information with the ~~certifying agency~~ division within 60 days after the first day of the vocationally handicapped person's employment or retention in employment precludes the employer from the protection and benefits of this part unless the information is filed before an injury for which benefits are payable under this part."

Section 13. Section 39-71-2202, MCA, is amended to read:

"39-71-2202. Policies made subject to chapter. Every policy for ~~the~~ insurance ~~of the compensation herein provided for or against liability therefor~~ written under compensation plan No. 2 shall be ~~deemed~~ considered to be made subject to the provisions of this chapter. ~~No insurer shall enter into any such policy of insurance unless its forms have been approved by the division, and as otherwise~~

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~~provided by law.~~"

Section 14. Section 39-71-2301, MCA, is amended to read:

"39-71-2301. Intent and purpose of plan. It is the intent and purpose of compensation plan No. 3 ~~that each industry, trade, occupation, or employment coming under the provisions of the plan shall be liable to pay for injuries happening to its employees coming under the provisions of the Workers' Compensation Act~~ to allow an employer to insure with a state operated workers' compensation insurance system, known as the state compensation insurance fund or state fund. The state fund shall be administered by the division of workers' compensation and shall pay all benefits under this chapter to the employees of an employer who elects coverage with the state fund."

Section 15. Section 39-71-2306, MCA, is amended to read:

"~~39-71-2306. Rates to be advanced for default~~ State fund authorized to charge interest. ~~Any employer who is in default in the observance of any order of the division issued pursuant to the provisions of 39-71-2301 to 39-71-2304, inclusive, shall, in addition to any other penalty provided by this chapter, be charged an advance of 25% over the established rate, and such advanced rate shall continue and be in force until the employer has ceased to be~~

~~in default.~~ The state fund may charge interest on any balance that is due and owing the state fund by an employer who has misrepresented the employer's payroll, improperly classified the employer's payroll, or defaulted in premium payments. The interest rate charged shall be set by the state fund at a reasonable rate. In determining what is a reasonable rate, the state fund shall review appropriate interest rates charged by financial institutions in this state."

Section 16. Repealer. Sections 39-71-305, 39-71-404, 39-71-2309, and 39-71-2310, MCA, are repealed.

-End-

MINUTES OF THE MEETING
LABOR & EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

January 25, 1979

The meeting of the Labor & Employment Relations Committee was called to order by Chairman Lowe on January 25, 1979, in Room 404 of the State Capitol at 1:30 p.m.

ROLL CALL: All members were present with the exception of Vice-Chairman Harold C. Nelson who was excused.

Chairman Lowe informed the Committee that the voting on Senate Bill #110 would be taken on Saturday, January 27, 1979, and those who would not be able to attend could vote ahead of time if they so desired.

Chairman Lowe then asked Senator Mehrens to inform the Committee of Senate Bill #140 which was to be considered at this meeting. Senator Mehrens introduced Norman H. Grosfield, Administrator for the Division of Workers' Compensation, to explain the changes in this bill. Mr. Grosfield explained the reasons for these changes and his statement is attached as Exhibit "A".

Mr. Grosfield indicated that the major insurance companies supported this bill and all members of the Advisory Council had concurred in these changes.

Chairman Lowe asked for opponents to Senate Bill 140. Mr. Steve Williams, Anaconda Company, Butte, Montana, had a prepared amendment to this bill and asked the Committee to consider adding "or award" on page 5, line 25.

Jim Oppedahl of the Legislative Council suggested that the amendment read as follows:

1. Page 5, line 25
Following: "~~or award~~"
Insert: or award

Senator Smith moved the Committee pass the bill as amended. The motion was seconded and the bill passed unanimously.

Chairman Lowe then opened the hearing on Senate Bill 141.

Mr. Jim Oppedahl from the Legislative Council informed the Committee of a computer error in the printed bill and suggested the following amendment:

1. Page 6, line 23 through line 25.
Strike: "division an application therefor, together with the certificate of the physician who attended him, and it shall be"

Senator Mehrens again introduced Mr. Grosfield to explain the proposed changes in Senate Bill #141. Mr. Grosfield's explanation of changes is attached as Exhibit "B".

Senator Lowe asked if the Division of Workers' Compensation could live with changing line 22 on page 2 from a strict $500 to "not exceeding $500". Mr. Grosfield indicated that he felt the Division could live with that change.

Mr. Steve Williams of the Anaconda Company in Butte spoke as a proponent of the bill only in that they wished that the reporting of accidents in writing would not be eliminated from the bill. Mr. Grosfield indicated that companies could require the reporting of accidents in writing as an in-house company procedure and it was not necessary to have it written into the bill.

Mr. Bill Samson of Mountain Bell stated that they had a problem with the bill on the certification of employees who had become vocationally handicapped and also those employees who were new employees certified vocationally handicapped on a previous job. It was suggested that Mr. Grosfield and Mr. Samson get together after the meeting to work this out and submit a proposed amendment to the Committee for the next meeting.

At this point, Mr. Williams of the Anaconda Company withdrew his opposition to the reporting of accidents in writing which he had previously.

The Committee feld they should wait to take action on Senate Bill #141 until Mr. Grosfield and Mr. Samson had worked out the amendment mentioned above.

There being no further business, the meeting adjourned at 2:50 p.m.

William R. Lowe

Senator William R. Lowe

Attachment 2
SB-141

MEMORANDUM BY THE DIVISION OF WORKERS' COMPENSATION REGARDING SENATE BILL 141, AN ACT TO GENERALLY REVISE THE LAWS RELATING TO WORKERS' COMPENSATION

The Division of Workers' Compensation, through an advisory council made up of representatives of the various interest groups concerned with workers' compensation legislation, proposes the changes as set forth in Senate Bill 141. The Division wishes to explain the reason for the changes in each section of the proposed bill. Reference will be made to the bill's section numbers.

Section 1. Section 1 amends section 39-71-208 by removing certain obsolete language from the section. The section originally related to the operation of the now abolished Industrial Accident Board. The board was a three member agency and thus held weekly meetings and minutes were kept at these meetings. The Division of Workers' Compensation is not operated by a multi-member board and thus the reference to minutes no longer has application. However, the Division considers that it should keep records of all awards, and the section is proposed to be amended to reflect this requirement.

Section 2. Section 2 amends section 39-71-210 concerning the Division's annual report. The section requires that the Division shall issue an annual report prior to October 1 of each year. However, due to statistical gathering and the receipt of information from the consulting actuary, it is impossible for the Division to comply with the October 1 deadline. The recent audit conducted through the Legislative Auditor's office suggested that the section be modified to reflect the current practical problems in putting out an annual report. Thus, the section is proposed to be amended by deleting the October 1 deadline and merely requiring that the report be submitted after the end of each fiscal year.

Section 3. Section 3 would amend section 39-71-304, which relates to the authority of the Division to review the books, records and payrolls of employers in order for the Division to properly administer the Workers' Compensation Act. The Division has found that the penalty under the current law for refusal to open the books to the Division is so minimal that it is often ignored. Thus, the Division proposes to increase the penalty from $100 to $500. Although the Division has relatively few problems with employers in reviewing and auditing their books, the Division believes that an adequate penalty is needed to enforce the Division's responsibility to properly review certain employer records.

Section 4. Section 4 amends section 39-71-405 relating to certain obligations of an employer who contracts out work. The proposed amendment would clarify the law relating to the obligation of employers when such employers utilize independent contractors to do certain work. The current law is somewhat unclear as to the requirements of the section. It is the Division's position that under the current law, an employer who contracts out work of a kind that is the regular and recurrent part of the business of the employer must determine that the contractor is properly complying with the Workers' Compensation Act. If the contractor has not properly complied, the employer, or the employer's insurer, would be liable for any benefits to an injured worker who was working for an uninsured contractor. The current law is somewhat

unclear in this regard in the use of the term "subcontractor". The section can only mean an independent subcontractor and the term subcontractor is not technically correct as it is used in the present law. Thus, it is proposed to clarify the law by indicating that the term "independent contractor" applies to the provisions of the law. Several style changes have been made in the section to make it more readable. Also, subsection (4) is being deleted in that it is considered that it has no practical application. It merely adds confusion to the section.

Section 5. Section 5 would amend section 39-71-504 by reducing the minimum assessment, under the Uninsured Employers Fund program, from $500 to $200. The Division has found a few instances wherein the minimum assessment appeared to be excessive considering the employer's business operation. Most assessments under the Uninsured Employers Fund far exceed the current minimum and thus the proposed change would have little effect on the balance in the fund. Also, it is proposed that the $30,000 limitation concerning an employer's liability under the Uninsured Employers Fund system would relate only to the liability an employer owes for benefit payments out of the fund, and not for liability an employer would owe for back due premium. The Division believes that an employer should have unlimited liablity regarding back due premium, although premium can only be collected for a retroactive three year period. However, the limitation will be maintained for an employer's liability concerning payment from the Uninsured Employers Fund for medical and compensation costs.

Section 6. Section 6 would amend section 39-71-603 by removing language relating to written notice that has little effect and application in the workers' compensation system. An employer merely has to have actual knowledge, and written knowledge is unneeded. Thus, the section has been rewritten to accurately reflect the practical administration of the Workers' Compensation Act relating to notice of an injury to an employer.

Section 7. Section 7 would amend section 39-71-604 by substituting more meaningful language concerning the submission of information to insurers or the Division. Also, the language in the section would be expanded to cover injuries occurring under all three of the workers' compensation plans and not merely State Fund cases. All three plans should be treated equally. The reference to the payment of a physician in the amount of $1.50 for submission of appropriate information is no longer a viable provision. Physicians should be paid their usual fees and the $1.50 provision is far outdated. (Note: An error was made in the printing of the bill. Material beginning with the word "division" on line 23 of page 6 through the word "be" on line 25, page 6, should have been deleted. An amendment will be submitted to correct this error.)

Section 8. Section 8 would amend section 39-71-609 by providing that insurers shall notify claimants fourteen days in advance instead of fifteen days when an insurer is going to terminate benefits. The fourteen day provision complies with weekly payment systems. Workers' compensation benefits are paid on a biweekly basis; i.e., every 14 days. The bill would also amend the section by providing that notice must be given to the claimant's authorized representative as well as to the claimant and the Division. The Legislative Auditor recommended that the section be amended in order to indicate that an insurer may terminate benefits when in fact a claimant has returned to work. Currently, there is a statutory conflict in the law. Wage

loss benefits are paid an injured worker while he is off work. However, section 603 would indicate that two additional weeks of benefits would have to be paid to an injured worker even though he has returned to work. The Division has taken the position that an insurer may in fact terminate benefits if the insurer knows that the claimant has returned to work. The proposed amendments would merely clarify the law in this area.

Section 9. Section 9 would amend section 39-71-736 by removing certain superfluous language in the section, and clarifying when compensation is due. Under the current law benefits are not due for the first "week" an injured worker is off work due to an industrial injury. Certain confusion has existed regarding the definition of "week", and it is believed that the section should be clarified. Thus, the term five days has been substituted. Usually workers are employed five out of seven days. Thus, the section would provide benefits after five days of loss of wages.

Section 10. Section 10 would amend section 39-71-901 which relates to procedures for certification under the Subsequent Injury Fund. The Subsequent Injury Fund is a fund that provides limited liability for employers who are willing to hire certain handicapped individuals. The section is to be clarified in certain respects. The term "physical" would be removed from the law so that a vocationally handicapped person could also have a mental handicap, but still be certified under the Subsequent Injury Fund. The definition of certifying agency is to be modified and the Division of Workers' Compensation will be substituted. In fact, it is the Division that makes the certification and the law would merely reflect this procedure.

Section 11. Section 11 would amend section 39-71-905, concerning certification under the Subsequent Injury Fund, by indicating that the Division is the certifying agency. It would also clarify the law by indicating that an individual must be certified prior to employment with a certain employer before certification under the Subsequent Injury Fund is effective. Under the current law, it is unclear as to exactly when certification must take place in order to be eligible for benefits under the fund.

Section 12. Section 12 would amend section 39-71-906 by substituting the word Division for certifying agency. This is merely clarifying language.

Section 13. Section 13 would amend section 39-71-2202 by providing that all insurance policies written by private insurance carriers are considered to be made subject to the provisions of the Workers' Compensation Act. It would remove the requirement that the Division review each insurance contract. If, as reflected in the amended section, all policies must conform to the provisions of the Workers' Compensation Act, there is no need for the Division to review the policies. The current provision adds additional unneeded workloads for private insurance carriers and the Division.

Section 14. Section 14 would amend section 39-71-2301 concerning the establishment of the State Compensation Insurance Fund by merely providing language reflecting what in fact the State Fund is and how it is operated. The current intent and purpose definition is meaningless and is not descriptive of the State Fund. Thus, langugage is being substituted to accurately state the intent and purpose of the State Fund.

Section 15. Section 15 would amend section 39-71-2306 by removing the current provision allowing the State Fund to charge a penalty of 25% over the established rate when an employer is in default, and substituting a provision allowing the State

Fund to merely charge interest to such an employer. Also, it would allow the State Fund to charge interest to an employer who has misrepresented the employer's payroll, or improperly classified an employer's payroll. This would be a substitute for section 39-71-305 which provides that an employer who misrepresents a payroll can be subject to up to ten times the amount of the difference between what was paid and what should have been paid. The Division believes that such a penalty is excessive and that a provision allowing the State Fund to charge interest at a current interest rate would be an appropriate substitute.

Section 16. Section 16 would repeal various sections in the Workers' Compensation Act. An explanation of each repealed section is set forth below.

Section 39-71-305. This section is proposed to be repealed based on the language of section 39-71-2306 as amended. The repealed section allows the State Fund to charge up to ten times the amount of premium that would be due for employers who have misrepresented payroll. It is believed that this is an excessive penalty and the proposed interest provision of section 39-71-2306 would address this problem.

Section 39-71-404. This section provides that a contractor performing work for public corporations must be bound by either Compensation Plan No. Two or Plan No. Three. The Division considers that contractors which are self-insured may at times wish to do work for public corporations and should not be restricted or required to take out insurance through a private insurance carrier or the State Fund in order to do such work. Thus, it is suggested that the section be repealed. The general law concerning coverage requirements for employers would then apply and an employer insuring under any one of the three compensation plans would be eligible for such public corporation work.

Sections 39-71-2309 and 39-71-2310. These sections provide that an employer insured with the State Fund who is in default is considered an uninsured employer, and an injured worker has the option of either taking under the Workers' Compensation Act or pursuing the employer through a general liability action. When an employer is in default of payment of premiums, the employer is still insured with the State Fund until formally cancelled, and the Division considers that employees should be fully covered under the Workers' Compensation Act. Matters concerning the collection of premium are between the employer and the State Fund and do not affect the injured worker. The injured worker will be fully covered under the Workers' Compensation Act and should receive workers' compensation benefits. Thus, it is suggested that these two sections be replealed.

If anyone has any questions concerning the proposed bill, please feel free to contact Mr. Norman H. Grosfield, Administrator, Division of Workers' Compensation, 815 Front Street, Helena, Montana 59601, phone 449-2047.

NHG/nmb

January 27 19 79

MR. President:

We, your committee on Labor & Employment Relations

having had under consideration Senate Bill No. 141

Respectfully report as follows: That Senate Bill No. 141
introduced bill was unanimously passed as amended.

1. Page 2, line 22.
Following: "of"
Insert: "not exceeding"

2. Page 9, line 21 through line 24.
Following: "certification." on line 21.
Strike: Line 21 through line 24 in their entirety.
Insert: "An employee who is employed at the time of application for certification may be certified as vocationally handicapped. An employee who is not employed at the time of application for certification must be certified as vocationally handicapped before entering new employment in order for the new employer to receive the benefits of this part."

And, as so amended
DO PASS

Sen. William R. Lowe, Chairman.

STATE PUB. CO.
Helena, Mont.

HB 527 does not do what it is intended to do and is technically incomplete. He said this bill does not help matters, but makes them worse. Questions were asked by the committee.

HOUSE BILL 564: Rep. Dozier, sponsor, said the bill would require any labor agreement between a school district and an exclusive representative to include a grievance procedure that culminates in final and binding arbitration. At the present time, such a procedure is optional.

Proponents were: Phil Campbell, MEA, Helena. Owen Nelson, MEA, said the bill would give all public employees the right to enforce thei collective bargaining agreements.

Opponent, Wayne Buchanan, School Boards Administration, said he sees lots of problems with the bill.

SENATE BILL 140: Senator, Mehrens, sponsor, introduced Norm Grosfield, Division of Workers' Compensation, who explained the bill. Mr. Grosfield said the bill would change certain provisions regarding workers' compensation judges (exhibit 4).

Proponents were: George Wood, Montana Self-Insurers Association, and James Murry, AFL-CIO. There were no opponents. Questions were asked by the committee.

SENATE BILL 141: Senator Mehrens, sponsor, introduced Norm Grosfield, Division of Workers' Compensation, who explained the bill to the committee (exhibit 5) and offered an amendment (exhibit 6).

James Murry and George Wood said they would support the bill with amendments. There were no opponents. Questions were asked by committee.

EXECUTIVE SESSION

SENATE BILL 140: It was moved by Rep. Fagg that SB 140 BE CONCURRED IN. Motion passed unanimously.

SENATE BILL 141: It was moved by Rep. Porter that SB 141 AS AMENDED, BE CONCURRED IN. Motion carried unanimously.

SENATE BILL 29: It was moved by Rep. Fagg that SB 29 BE CONCURRED IN. Motion carried. Rep. Stobie voted no.

HOUSE BILL 362: It was moved by Rep. Underdal that HB 362 DO NOT PASS. Motion carried unanimously.

HOUSE BILL 548: It was moved by Rep. Harrington that HB 548 DO PASS. Motion carried unanimously.

SENATE BILL NO. 141

INTRODUCED BY MEHRENS, PETERSON, HEALY, HAFFERMAN, LOWE

BY REQUEST OF THE DEPARTMENT OF LABOR AND INDUSTRY

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE LAWS RELATING TO WORKERS' COMPENSATION; AMENDING SECTIONS 39-71-208, 39-71-210, 39-71-304, 39-71-405, 39-71-504, 39-71-603, 39-71-604, 39-71-609, 39-71-736, 39-71-901, 39-71-905, 39-71-906, 39-71-2202, 39-71-2301, AND 39-71-2306, MCA; AND REPEALING SECTIONS 39-71-305, 39-71-404, 39-71-2309, AND 39-71-2310, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-71-208, MCA, is amended to read:

"39-71-208. Blank forms, minutes, and records. The division shall cause to be printed such blank forms as it ~~shall--deem--requisite~~ considers necessary to facilitate or promote the efficient administration of this chapter. It shall provide a ~~book-in-which-shall-be-entered-the-minutes-of-all-its-proceedings,-a-book-of-record-in-which--shall--be-recorded~~ record of all awards made by the division, and such other books or records as it ~~shall-deem-requisite~~ considers necessary for the purpose and efficient administration of this chapter. All such records are to be kept in the office of the division."

Section 2. Section 39-71-210, MCA, is amended to read:

"39-71-210. Annual report of division -- copies for general distribution. The division shall, ~~not-later-than-October-1~~ after the end of each fiscal year, make a report to the governor covering its entire operations and proceedings for the ~~preceding~~ fiscal year, with such suggestions or recommendations as it may deem of value for public information. A reasonable number of copies of such the report shall be printed for general distribution."

Section 3. Section 39-71-304, MCA, is amended to read:

"39-71-304. Books, records, and payrolls to be open to inspection -- penalty for refusal. The books, records, and payrolls of the an employer pertinent to the administration of this chapter shall always be open to inspection by the division or any duly authorized employee thereof for the purpose of ascertaining the correctness of the payroll, the number of men workers employed, and such other information as may be necessary for the division and its management under this chapter. Refusal on the part of the an employer to submit ~~said~~ the books, records, and payrolls for such inspection shall subject the offending employer to a penalty of NOT EXCEEDING ~~$100~~ $500 for each offense, to be collected by through a civil action in the name of the state and paid into the state treasury."

Section 4. Section 39-71-405, MCA, is amended to read:

REFERENCE BILL

"39-71-405. Liability of employer who contracts work out. (1) Any An employer who contracts with an independent contractor to have work performed of a kind which is a regular or a recurrent part of the work of the trade, business, occupation, or profession of such employer shall be is liable for the payment of compensation benefits under this chapter to the employees of any subcontractor unless the subcontractor primarily liable for the payment of such compensation has coverage under this chapter the contractor if the contractor has not properly complied with the coverage requirements of the Worker's Compensation Act. Any employers insurer who shall become becomes liable for such compensation payment of benefits may recover the amount of benefits paid and to be paid and necessary expenses from the subcontractor contractor primarily liable therein.

(2) Where any an employer procures contracts to have any work to be done, wholly or in part for him, by a contractor other than an independent contractor, and the work so procured contracted to be done is a part or process in the trade or business of such the employer, then such the employer shall be is liable to pay all compensation benefits under this chapter to the same extent as if the work were done without the intervention of such the contractor, and the work so procured contracted to be done shall not be construed to be casual employment. Where any an employer

procures contracts work to be done as specified in this subsection, such the contractor and his the contractor's employees shall be presumed to have elected to come under that plan of compensation adopted by the employer unless they shall have otherwise elected as provided herein.

(3) Where any an employer procures contracts any work to be done, wholly or in part for him the employer, by a an independent contractor, where the work so procured contracted to be done is casual employment as to such employer, then such then the contractor shall become the employer for the purposes of this chapter.

(4) Where an employer procures any work to be done by any contractor or through him by a subcontractor, the payment for which is to be made in property other than money or its equivalent and the value of which property is speculative or intangible, then and in that event the employer shall not be liable for compensation, but such liability shall fall upon the contractor or subcontractor, as the case may be."

Section 5. Section 39-71-504, MCA, is amended to read:

"39-71-504. Funding of fund. The fund shall be funded in the following manner:

(1) The division shall require that the uninsured employer pay to the fund a penalty of either double the premium amount the employer would have paid on the payroll

of the employer's workers in this state if the employer had been enrolled with compensation plan No. 3 or ~~$500~~ $200, whichever is greater. In determining the premium amount for the calculation of the penalty under this subsection, the division shall make an assessment on how much premium would have been paid on the employer's past 3-year payroll for periods within the 3 years when the employer was uninsured. An assessment for payroll paid by the uninsured employer for any time prior to July 1, 1977, may not be made.

(2) The fund shall receive from an uninsured employer an amount equal to all benefits paid or to be paid from the fund to an injured employee of the uninsured employer. However, the uninsured employer's liability under this subsection may not exceed $30,000.

~~(3) In no event may an uninsured employer's combined liability under subsections (1) and (2) of this section exceed $30,000.~~

~~(4)~~(3) The division may, ~~at the beginning of each fiscal year,~~ determine that the $1,000 assessments that are charged against an insurer in each case of an industrial death under 39-71-902(1) shall be paid to the uninsured employers' fund rather than the subsequent injury fund."

Section 6. Section 39-71-603, MCA, is amended to read:

"39-71-603. Notice of ~~claims for~~ injuries other than death to be submitted within sixty days ~~exception~~

~~actual notice.~~ No ~~claims~~ claim to recover ~~compensation~~ benefits under ~~this act~~ the Workers' Compensation Act, for injuries not resulting in death, shall be ~~maintained~~ considered compensable unless, within 60 days after the occurrence of the accident which is claimed to have caused the injury, notice ~~in writing stating the name and address of the person injured,~~ of the time and place where the accident occurred, and the nature of the injury and ~~signed by the person injured or someone in his behalf shall be served upon~~ is given to the employer or the employer's insurer, by the injured employee or someone on the employee's behalf. ~~except as otherwise provided in 39-71-602. However, actual~~ Actual knowledge of such the accident and injury on the part of such the employer or ~~his~~ the employer's managing agent or superintendent in charge of the work upon which the injured employee was engaged at the time of the injury ~~shall be~~ is equivalent to ~~such service~~ notice."

Section 7. Section 39-71-604, MCA, is amended to read:

"39-71-604. Application for compensation ~~under plan three.~~ (1) Where a worker is entitled to ~~compensation~~ benefits under ~~compensation plan No. 3~~ this chapter, the worker shall file with the ~~division an application therefor together with the certificate of the physician who attended him, and it shall be~~ insurer or the division all reasonable

information needed by the insurer to determine compensability. It is the duty of such the worker's attending physician to lend all necessary assistance in making application for compensation and such proof of other matters as may be required by the rules of the division without charge to the workman worker. The filing of a certificate of forms or other documentation by the attending physician does not constitute a sworn claim for compensation.

~~(2)--For-a-proper-compliance--with--the--provisions--of subsection---(1)--of--this--section,--the--physician,--after approval--by--the--division,--shall--be--paid--out--of---the division's--administrative--moneys--in-the-earmarked-revenue fund,-$1.50-for-each-case.~~

~~(3)~~(2) Where death results from the an injury, the parties entitled to compensation under compensation plan No. 3 or someone in their behalf shall make application for the same to the division file a claim with the insurer or the division. The application claim must be accompanied with proof of death and proof of relationship, showing the parties entitled to compensation, certificate of the attending physician, if any, and such other proof as may be required by the rules of the division."

Section 8. Section 39-71-609, MCA, is amended to read:

"39-71-609. Denial of claim after payments made or

termination of benefits by insurer -- fifteen fourteen days' notice required. If the an insurer determines to deny a claim on which payments have been made under 39-71-608 during a time of further investigation or, after a claim has been accepted, terminates biweekly compensation benefits, it may do so only after ~~15~~ 14 days' written notice to the claimant, the claimant's authorized representative, if any, and the division. However, if an insurer has knowledge that a claimant has returned to work, compensation benefits may be terminated as of the time the claimant returned to work."

Section 9. Section 39-71-736, MCA, is amended to read:

"39-71-736. Compensation -- from what date paid. When an--injured--employee--has--a-beneficiary-who-is-entitled-to compensation--in--case--of--the--employee's--death,--no No compensation shall may be paid for the first week of any 5 days loss of wages due to an injury, but if disability If loss of wages continues ~~1~~ week for more than 5 days, compensation shall be paid from the date of injury. However, separate benefits of medical and hospital services shall be furnished from the date of injury."

Section 10. Section 39-71-901, MCA, is amended to read:

"39-71-901. Definitions. As used in this part, the following definitions apply:

(1) "Vocationally handicapped" means a person who has

a medically certifiable permanent ~~physical~~ impairment which is a substantial obstacle to obtaining employment or to obtaining reemployment if ~~the~~ employee should become unemployed, considering such factors as the person's age, education, training, experience, and employment rejection.

~~(2)--"Certifying--agency"--means--the--section--of rehabilitation,-division-of-workers'-compensation.~~

~~(3)~~(2) "Certificate" means documentation issued by the ~~certifying--agency~~ division of workers' compensation to an individual who is vocationally handicapped.

~~(4)~~(3) "Fund" means the subsequent injury fund."

Section 11. Section 39-71-905, MCA, is amended to read:

"39-71-905. Certification as vocationally handicapped. A person who wishes to be certified as vocationally handicapped for purposes of this part may apply to the ~~certifying-agency~~ division on forms furnished by ~~that-agency~~ the division. The ~~certifying-agency~~ division shall conduct an investigation and shall issue a certificate to a person who, in the division's discretion, meets the requirements for vocationally handicapped certification. ~~Failure--of--a person--to--be--certified--before--employment--precludes-the person's-employer-or-an--employer's--insurer--from--benefits under--this-part.~~ AN EMPLOYEE WHO IS ~~EMPLOYED-AT-THE-TIME-OF APPLICATION-FOR-CERTIFICATION~~ REQUESTING REEMPLOYMENT MAY BE

CERTIFIED AS VOCATIONALLY HANDICAPPED. AN EMPLOYEE WHO IS NOT EMPLOYED AT THE TIME OF APPLICATION FOR CERTIFICATION MUST BE CERTIFIED AS VOCATIONALLY HANDICAPPED BEFORE ENTERING NEW EMPLOYMENT IN ORDER FOR THE NEW EMPLOYER TO RECEIVE THE BENEFITS OF THIS PART."

Section 12. Section 39-71-906, MCA, is amended to read:

"39-71-906. Employer hiring or retaining certified vocationally handicapped person to file information with ~~certifying--agency~~ division -- effect of failure to file. Upon commencement of employment or retention in employment of a certified vocationally handicapped person, the employer shall submit to the ~~certifying-agency~~ division, on forms furnished by the agency division, all pertinent information requested by the agency division. The ~~certifying-agency~~ division shall acknowledge receipt of the information. Failure to file the required information with the ~~certifying~~ agency division within 60 days after the first day of the vocationally handicapped person's employment or retention in employment precludes the employer from the protection and benefits of this part unless the information is filed before an injury for which benefits are payable under this part."

Section 13. Section 39-71-2202, MCA, is amended to read:

"39-71-2202. Policies made subject to chapter. Every

policy for the insurance ~~of the compensation herein provided for, or against liability therefor~~ written under compensation plan No. 2 shall be ~~deemed~~ considered to be made subject to the provisions of this chapter. ~~No insurer shall enter into any such policy of insurance unless its forms have been approved by the division, and as otherwise provided by law.~~"

Section 14. Section 39-71-2301, MCA, is amended to read:

"39-71-2301. Intent and purpose of plan. It is the intent and purpose of compensation plan No. 3 ~~that each industry, trade, occupation, or employment coming under the provisions of the plan shall be liable to pay for injuries happening to its employees coming under the provisions of the Workers' Compensation Act~~ to allow an employer to insure with a state operated workers' compensation insurance system, known as the state compensation insurance fund or state fund. The state fund shall be administered by the division of workers' compensation and shall pay all benefits under this chapter to the employees of an employer who elects coverage with the state fund."

Section 15. Section 39-71-2306, MCA, is amended to read:

"39-71-2306. ~~Rates to be advanced for default~~ State fund authorized to charge interest. ~~Any employer who is in~~

~~default in the observance of any order of the division issued pursuant to the provisions of 39-71-2301 to 39-71-2304, inclusive, shall, in addition to any other penalty provided by this chapter, be charged an advance of 25% over the established rate, and such advanced rate shall continue and be in force until the employer has ceased to be in default.~~ The state fund may charge interest on any balance that is due and owing the state fund by an employer who has misrepresented the employer's payroll, improperly classified the employer's payroll, or defaulted in premium payments. The interest rate charged shall be set by the state fund at a reasonable rate. In determining what is a reasonable rate, the state fund shall review appropriate interest rates charged by financial institutions in this state."

Section 16. Repealer. Sections 39-71-305, 39-71-404, 39-71-2309, and 39-71-2310, MCA, are repealed.

-End-